

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 June 6, 2023

17 3:00 PM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: DEIRDRA AND KAREN

1 HEARING re Discovery Conference Conducted Using Zoom for
2 Government.

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1 P R O C E E D I N G S

2 THE COURT: All right, good afternoon, everyone.
3 This is Judge Glenn. We're here in Celsius with respect to
4 a discovery dispute. Who's going to argue for the Debtor?

5 MR. MCCARRICK: That's me, Your Honor. TJ
6 McCarrick, Kirkland & Ellis, on behalf of the Debtors.

7 THE COURT: Okay. Please go ahead.

8 MR. MCCARRICK: Thank you, Your Honor. Good
9 afternoon. Just to level-set to give Your Honor some
10 background context for where we are in these proceedings,
11 we're in the middle of discovery on three related items.
12 The intercompany claims estimation motion, the substantive
13 consolidation motion, and the fraudulent conveyance action.

14 The deadline for substantial completion of
15 production of documents was on May 31st, and that's followed
16 by a two-week deposition window, which ends on June 15th.
17 The Series B Holders have known that for over a month after
18 Your Honor entered the scheduling order governing these
19 three actions.

20 After reviewing certain documents in the Series B
21 Holders' written interrogatory responses, which identified
22 33 individuals with knowledge of relevant issues, the
23 Debtors identified 13 current employees for depositions on
24 May 31st. From the WestCap side of the house, we identified
25 Laurence Tosi, Alex Goodman, Larry Katz, Brian Reinken, Adi

1 Hemrajani, Jeff Mullen and Sharon Khoo. Subsequently, we've
2 substituted Ms. Khoo and requested a different opponent,
3 Daphne Tong.

4 On the CDPQ side of the house, we've requested
5 depositions of Mathieu Provost, Thomas Birch, Georges Azzi,
6 Alexander Guyot Desjardins, and Jonathan Gagnon. The Series
7 B Holders have only been willing to make four of those
8 individuals available. They've only been willing to make
9 Mr. Tosi, Mr. Goodman, Mr. Provost and Mr. Birch available.
10 And they have refused to offer even dates for anyone else.
11 So we're here in an all or nothing position.

12 Our view is that the nine additional deponents
13 have relevant and material knowledge, and I can give Your
14 Honor just some very quick background on what that knowledge
15 is. Based on their responses to Interrogatory Number 1,
16 which asked whether who of the CDPQ and WestCap individuals
17 had material knowledge of WestCap's and CDPQ's investment in
18 Celsius, including the due diligence process, they
19 identified in addition to the four individuals that they
20 have offered, Mr. Hemrajani, Mr. Katz, Mr. (indiscernible)
21 Mr. Gagnon, and Mr. Guyot Dejardins.

22 In response to Interrogatory Number 6, for
23 example, which asked for who had material knowledge or
24 access to Celsius materials, including financial statements
25 and the like, they identified Mr. Katz, Mr. Azzi, Mr.

1 (indiscernible), Mr. Gagnon, and again, Mr. Guyot Dejardins.

2 The documents also support that these individuals
3 have unique and relevant knowledge. Mr. Tosi, Mr. Goodman,
4 Mr. Provost and Mr. Birch are not on all emails relevant to
5 this case, and in fact, they're not even on some of the most
6 relevant and I think most interesting emails.

7 I want to tick through very briefly, based on the
8 Series B Holders submission an hour ago, their excuses for
9 why they don't think they should have to offer these
10 deponents. The first is that the depositions would be
11 entirely duplicative or cumulative. When they had told that
12 to us, we had asked the Series B Holders, what did you do to
13 confirm that these individuals had only duplicative or only
14 cumulative knowledge, because we wanted to give them the
15 benefit of the doubt based on the documents we saw that was
16 not accurate. But we wanted to understand what process the
17 Series B Holders had undertaken in order to assure
18 themselves and give us comfort that they weren't just trying
19 to hide deponents they didn't wish to be deposed. They have
20 never responded to that request. They still haven't
21 responded to that request as of today.

22 I think the reason is obvious. And if we just
23 take one example from one of the two groups, Mr. Katz, from
24 WestCap. Mr. Katz from WestCap was identified to the Series
25 B investors as the individual who is leading due diligence

1 along with Deloitte and working on Celsius's Financial
2 systems. He is the guy. That's just providing you one
3 example. We could provide you additional documents at a
4 later date if Your Honor would -- be happy to. And I'm
5 happy to tick through all the individuals, but that's just
6 to give you one example.

7 The second excuse that the Series B Holders
8 deployed for the first time about an hour ago was the 10-
9 deposition limit from the Federal Rules of Civil Procedure.
10 They have never raised that to us before, and at the end of
11 the day, Your Honor, it's a red herring. What we're arguing
12 over here isn't the difference between 10 and 13
13 depositions. They haven't even been willing to move off of
14 four, which is the reason that we contacted Your Honor in
15 the first place.

16 I would note that between us and the UCC, who has
17 also cross-noticed these individuals, we think we're going
18 to get to that 13 number anyway, or would be able to,
19 between the two groups here, because the UCC is going to
20 have to be able to notice up to 10 depositions themselves.
21 But I'll let them speak to that to the extent that they
22 want.

23 The last argument or excuse that the UC -- excuse
24 me -- that the Series B Holders make is undue burden. And
25 frankly, Your Honor, that one is frivolous. There are

1 hundreds of millions of dollars at stake that the Series B
2 Holders are seeking to carve out of the estate for their own
3 benefit. There are two parties who are represented by
4 global law firms, Milbank and Jones Day, with almost double
5 digits of lawyers and almost every discovery correspondence
6 we have.

7 We are also -- the Debtors are not asking for
8 anything that we aren't willing to do. The Series B Holders
9 have requested that the Debtors -- and we are going to put
10 up by the end of the discovery period the following. Mr.
11 Ferraro is going to be deposed on June 12th. Mr.
12 (indiscernible) going to be deposed on the 13th. Mr.
13 (indiscernible) has been offered on the 14th. Mr.
14 Blonstein, we're working on additional deposition time for.
15 We're giving them a 30(b)(6) deposition of CNL. We're
16 giving them a 30(b)(6) deposition of LLC. We're working to
17 get dates for Mr. (indiscernible), and we're giving him the
18 opportunity to cross notice any depositions that the UCC
19 had, which takes us to at least sitting here right now about
20 eight.

21 So the notion that WestCap or CDPQ each couldn't
22 offer at least seven a pop is a little bit much for the
23 Debtors to take.

24 THE COURT: Am I correct that each of the
25 individuals that you wish to depose has been identified in

1 their interrogatory answers?

2 MR. MCCARRICK: Your Honor, the answer would be
3 there's two who have not. It's 11 of the 13 total have been
4 deposed. Off the top of my head, I don't remember exactly
5 which two were not. But 11 out of the 13 were identified as
6 individuals either with knowledge or material knowledge. It
7 is at least the phrasing that the requests were issued in.

8 The last thing that I would say, Your Honor, is
9 that they made a point about the case law that we had cited,
10 and this may just be for another day if we get there. They
11 had noted that the case law we cited was post-dated by the
12 proportionality amendments to the Federal Rules of Civil
13 Procedure. I just did a quick check before --

14 THE COURT: There's too much at stake in this
15 matter, in my view, respectfully, to believe that the
16 proportionality requirement is an impediment to taking
17 depositions that otherwise should be taken.

18 MR. MCCARRICK: Your Honor, the Debtors entirely
19 agree. And just to give you comfort, all of the cases that
20 we cited have been cited with approval and compelling
21 depositions after 2015, just based on a quick check of
22 citing references.

23 With that, the Debtors -- we're happy to answer
24 any questions that you have, but we're also happy to respond
25 to whatever the --

1 THE COURT: Yeah, my other question would be, to
2 come back to this point, who are the two witnesses that you
3 wish to depose that were not identified in their
4 interrogatory answers?

5 MR. MCCARRICK: Your Honor, let me just get with
6 my team on this and I'll get you an answer to that,
7 certainly by the end of the conference.

8 THE COURT: Okay. All right. All right, anybody
9 else wish to argue in support of being able to take all 13
10 depositions? All right. Let me hear from the Series B
11 Preferred Holders. Who's going to argue for them?

12 MS. FELL: Good afternoon, Your Honor. Katherine
13 Kelly Fell, from Milbank LLP, on behalf of the Community
14 First Investor Group of the Series B Preferred Holders.

15 THE COURT: Sure. Go ahead.

16 MS. FELL: Thank you, Your Honor. Your Honor, the
17 13 depositions that are requested by the Debtors are wildly
18 disproportionate to the needs of these cases. And the
19 Debtors have referenced that individuals were disclosed in
20 interrogatories as having certain knowledge. But what's
21 important here under Rule 26(b)(1) is what is the
22 information that is important to resolution of these issues?
23 And you have to weigh that against the burden to the
24 parties.

25 The Series B Preferred Holders have already

1 designated and proffered for deposition the four most
2 knowledgeable people about the CNL investment. That
3 includes for WestCap the founder and most senior person,
4 Laurence Tosi, as well as WestCap principal Alex Goodman,
5 who was the lead on the day-to-day supporting an investment
6 from day one. The remaining people were largely --

7 THE COURT: The remaining two people that you've
8 tendered. Or the remaining people they've asked for?

9 MS. FELL: I'm sorry. So there are -- those are
10 the two designated individuals from WestCap and there are
11 two designated individuals from CDPQ.

12 THE COURT: Okay.

13 MS. FELL: There are an additional nine witnesses
14 that the Debtors are requesting. Those individuals all have
15 overlapping testimony of the two primary individuals that we
16 have designated. They -- and the testimony of the Series B
17 Preferred Holders as a whole in these matters is largely not
18 relevant to resolution of this these issues. And because
19 it's only marginally --

20 THE COURT: Why do you say that?

21 MS. FELL: The matters set for hearing on July
22 24th are an intercompany estimation, fraudulent transfer,
23 and substantive consolidation matters. With respect to
24 intercompany estimation and fraudulent transfer, those
25 matters are largely going to turn on the transactional and

1 financial information that's in the possession, custody and
2 control of the Debtors.

3 With respect to the substantive consolidation
4 motion, there are two prongs in that analysis under Second
5 Circuit precedent. There is the hopeless entanglement
6 prong, which is also going to be resolved largely with
7 reference to the transactional and financial information of
8 the Debtors.

9 The second prong of that motion is about creditor
10 reliance and expectations regarding issues like corporate
11 separateness. The Series B Preferred Holders' testimony is
12 relevant to that issue, although I will note that both the
13 Debtors and the creditors in their substantive consolidation
14 motions dispute that relevance.

15 And so, in our view, the testimony of the Series B
16 Preferred Holders really is only relevant to that prong on
17 one of the three motions set for hearing. And it's not the
18 entirety of the question, right? There's of course other
19 creditors who will speak to that issue.

20 So, in light of that, it seems wildly
21 disproportionate to have 13 employees of two institutional
22 holders speak to --

23 THE COURT: So you've offered four witnesses of
24 your client, right?

25 MS. FELL: We offered two witnesses from my client

1 and two witnesses from CDPQ for --

2 THE COURT: Okay.

3 MS. FELL: -- four for the Series B Preferred
4 Holders.

5 THE COURT: All right.

6 MS. FELL: So, in in light of the fact that our
7 testimony is really only issue relevant to one narrow issue
8 on one motion, and in fact the Debtors and the Committee
9 dispute its relevance in that respect, it's not proportional
10 to seek testimony of 13 employees. And importantly, these
11 are not 13 individual equity holders. These are 13
12 employees of two institutional equity holders. Their
13 individual knowledge is not relevant to the creditor
14 reliance prong at all.

15 We've identified the most senior and most involved
16 people. The remaining individuals for WestCap, there are --
17 a very young, junior, 24-year-old analyst is one of the
18 deponents, who worked entirely at the direction of the more
19 senior employees.

20 There are people who worked on narrow projects,
21 like a human resources professional who supported executive
22 search efforts, which is not relevant to these three
23 matters; a capital markets professional who was working on a
24 project that never got off the ground of a coin-backed
25 security, which is not relevant to this matter. And if it

1 does come up, the other witnesses have relevant knowledge
2 about that.

3 And so our view is that we have proffered these
4 two individuals. CDPQ has proffered their most relevant
5 individuals. We're offering them in both their individual
6 and corporate representative capacities, and they can cover
7 the entire waterfront of anything that's relevant to these
8 matters.

9 So, in addition to that, as counsel mentioned, the
10 request exceeds the presumptive limit under Rule 30. To
11 exceed that limit, they need good cause and an order from
12 this Court, which they have not yet obtained.

13 But we really just think it illustrates why this
14 is so wildly disproportionate. It exceeds the rules. It's
15 a issue for which we're relevant. There's just an excessive
16 -- 119 hours, I think, of total testimony was initially
17 requested from these two institutional holders. And so,
18 it's just not appropriate here.

19 And finally, Your Honor, as you're aware, this is
20 an extremely expedited schedule. And courts consider in the
21 proportionality and burden analysis the timing and phase of
22 litigation, and they require parties, the requesting party,
23 to affirmatively refrain from requesting testimony that is
24 not proportional.

25 And we think here under the expedited timeframe,

1 the marginal relevance, and the sheer -- compared to the
2 sheer number of depositions that they're asking for, it just
3 -- it doesn't weigh out in their favor. And we'd ask Your
4 Honor to limit their ability to take depositions to just
5 four of the Series B Preferred Holders.

6 THE COURT: Let me ask this question. What's the
7 amount in controversy? I mean your clients -- what's the
8 aggregate claims of the Preferred Holders?

9 MS. FELL: I think I will have to phone a friend
10 with Mr. Mester on that issue, if he has the number at his
11 fingertips.

12 MR. MESTER: Your Honor, Josh Mester, Jones Day,
13 on behalf of CDP Investments. I believe the total amount of
14 the Series B Preferred is somewhere in the range of 600
15 million to 750 million dollars.

16 THE COURT: All right. Yeah, I wasn't sure if it
17 was 550, but that sounds -- I was -- I haven't looked -- I
18 didn't look today, but it's certainly north of \$500 million
19 and maybe far north of \$500 million. Mr. Mester, do you
20 want to be heard?

21 MR. MESTER: I do, Your Honor. Thank you. I echo
22 Ms. Fell's comments and arguments and adopt them. What I
23 wanted to address, Your Honor, is I wanted to give you more
24 specifics about the particular individuals at CDPQ that the
25 Debtors would like to depose.

1 Again, we've offered Messrs. Birch and Provost.

2 Mr. Birch not only was leading the investment team, but is
3 also a member of the investment committee at CDPQ. So he's
4 the seniormost person involved in the investment. Mr.
5 Provost was on the investment team leading the investment
6 efforts.

7 Three of the individuals, Messrs. (indiscernible),
8 Gagnon, and Desjardins are all junior analysts on the
9 investment team that worked under Mr. Provost's direction.
10 They generally participated in meetings with Mr. Provost.
11 We don't think they had any individual communications that
12 would be considered unique. They definitely didn't have any
13 decision-making authority. And Mr. Provost is quite
14 familiar with the same facts that the three analysts have.

15 The other individual, Mr. Azzi, he works in a
16 group that supports this particular investment team at CDPQ.
17 Again, not involved in individualized direct communications
18 with Celsius. He actually got his information most likely
19 from the investment team and the diligence they were
20 conducting or the outside consultants, and also doesn't have
21 any decision-making authority.

22 So, between Mr. Birch and Mr. Provost and the
23 30(b)(6) depositions, the landscape should be covered. And
24 any individualized unique knowledge that the analysts or Mr.
25 Azzi may have will be of limited value.

1 THE COURT: All right. Thank you. Mr. McCarrick,
2 first, have you identified who the two witnesses that you
3 want to depose, who weren't identified in interrogatory
4 answers.

5 MR. MCCARRICK: Yes, and -- yes, Your Honor. It's
6 Mr. Reinken, Brian Reinken, and Jeff Mullen. I believe Mr.
7 Reinken was described as a talent acquisition executive or
8 someone involved in, you know, finding high level executives
9 on behalf of WestCap.

10 All I would note about that is that we've seen Mr.
11 Reinken's notes of conversations that he had with Celsius
12 individuals about their books and records, their financial
13 oversight policies. And I can tell you that in due
14 diligence memos, Mr. Mullen and Mr. Reinken were both
15 disguised as "members of the WestCap deal team." They
16 worked "closely with Celsius and Deloitte" to "assess the
17 company's accounting, risk management, financial reporting."

18 Now, Ms. Fell would like to say that their views -
19 - it's disputed whether or not the Series B Holders' views
20 or WestCap's views of Celsius' corporate separateness is
21 irrelevant. And we can fight over whether or not they're a
22 creditor or whether or not they're equity, or whether or not
23 there's something in between at different times.

24 But I can tell you, if the Series B Holders are
25 going to stand here and tell Your Honor that there was

1 corporate separateness between these Celsius entities and
2 their own employees at the time thought there was anything
3 but, we are entitled to put on and get discovery into that
4 evidence. So, that addresses those two people.

5 THE COURT: Yeah, what about Mr. Mullen? You
6 addressed Mr. Reinken, but what about Mr. Mullen?

7 MR. MCCARRICK: Mr. Mullen was also identified in
8 the same due diligence memos as a member of the WestCap Deal
9 team and worked "closely with Celsius and Deloitte" to
10 "assess the company's accounting, risk management financial
11 reporting." There was four or five individuals who were
12 described as members of the WestCap deal team and they all -
13 - excuse me -- there were seven individuals who are
14 identified as members of the WestCap deal team with that
15 description. I could provide more color if it would be
16 helpful here.

17 THE COURT: Now, let me -- hold on. Did you
18 discuss the proposed length of the depositions? Do you need
19 seven hours for each of these witnesses? I mean, there's a
20 presumptive limit of seven hours. Do you need seven hours
21 for each of the 13 that you've identified?

22 MR. MCCARRICK: Your Honor, we would be willing to
23 negotiate that with the Series B Holders. We're willing to
24 be reasonable here. I expect that we won't need seven hours
25 for each and every one of these folks. But the position we

1 were put in is four or bust.

2 THE COURT: Okay. And did you discuss -- I know
3 they didn't offer very many witnesses, but did -- what dates
4 were you proposing? How many -- are you taking -- different
5 members of your team taking simultaneous depositions?

6 MR. MCCARRICK: Yes, Your Honor. We're going to
7 be double-tracking, and we're happy to do that and we're
8 prepared to do that. We're willing to depose people as
9 early as Thursday, Friday, Saturday, Sunday, all the way
10 through the 15th. We're ready to roll.

11 THE COURT: All right. Anything further that you
12 want to respond?

13 MS. FELL: Your Honor, if I may --

14 THE COURT: Just a second. I'll give you a chance
15 --

16 MS. FELL: I'm sorry.

17 THE COURT: -- Ms. Fell. Okay?

18 MS. FELL: I'm sorry.

19 THE COURT: Go ahead, Mr. McCarrick. Is there
20 anything else you wanted to add?

21 MR. MCCARRICK: Your Honor, I could -- I would
22 just note with respect to CDPQ, the one individual that Mr.
23 Mester spoke at some length about was Mr. Azzi. I can tell
24 you that there is a 2020 risk management report for which he
25 is the author that speaks to Celsius' internal controls that

1 I think puts him in a unique situation, even if he was
2 working at someone else's direction, sometime you'd like to
3 talk to the author.

4 THE COURT: Okay. All right. Ms. Fell, what did
5 you want to say?

6 MS. FELL: I'm sorry, Your Honor. I thought you
7 were opening up the floor earlier.

8 THE COURT: No, I'm opening it up to you now.

9 MS. FELL: Thank you very much. Just a few points
10 to respond to. Mr. McCarrick said that Mr. Reinken and Mr.
11 Mullen are not on the interrogatories. That's appropriate
12 because they have exceedingly limited knowledge about the
13 Debtors. Mr. Reinken was referenced as on the deal team.

14 The senior group that was making decisions about
15 the investment was -- included a few people at WestCap, the
16 most important of whom is Mr. Tosi, who is the founder and
17 most senior person at WestCap, who led the entire investment
18 operation. Any information about the decision to invest
19 from that sort of senior team is going to be in the
20 possession, custody and control of Mr. Tosi.

21 Mr. Reinken is a human resources professional.
22 That is his role in supporting executive search and things
23 of that nature. Mr. Mullen, again, is a capital markets
24 specialist. Importantly, we're not contesting that these
25 individuals don't have any knowledge of the Debtors. They,

1 of course, did and worked on the investment. But that's not
2 the question here. You don't need, you know, every person
3 in a meeting to testify as to what happened at the meeting.
4 So we're asking for a little bit of rationality to be imbued
5 into this schedule.

6 I will also note that in terms of the timing of
7 the witnesses for the depositions that we're taking of the
8 Debtor witnesses, they have taken the position that we have
9 to share time with the Committee. So we are limited in our
10 ability to take depositions from a time perspective as well.

11 And because the information that is most important
12 to resolution of these matters is in the Debtors' own
13 possession, custody and control, it's appropriate that more
14 of the discovery would be of the Debtors, including the
15 Debtors' witnesses. And I'll note that Mr. McCarrick said
16 that the witnesses they would like, Mr. Mullen and Mr.
17 Reinken, are on emails about the Debtors' books and records.

18 Of course, the Debtors do not need to conduct
19 discovery of the WestCap employees about their own books and
20 records. They have the ability to discover that information
21 themselves. They have a burden to discharge here. The
22 Series B Preferred Holders do not. And so we would ask that
23 the schedule here reflect that.

24 And finally, I would just say in terms of limiting
25 the depositions, as I mentioned, Mr. Hemrajani is a 24-year-

1 old analyst and worked entirely at the direction of more
2 senior people. We'd ask that the Court not permit that
3 deposition to go forward. We'd also ask Mr. Mullen and Mr.
4 Reinken, who are not on the interrogatories and who had
5 limited roles, that the Court not let those depositions go
6 forward.

7 We understand that Mr. Katz is the only other
8 person other than Mr. Tosi and Mr. Goodman, who's on our
9 list. Mr. Katz is -- held a similar role to Mr. Goodman.
10 He was very involved in the investment, but he has similar
11 knowledge to Mr. Goodman. So it would be overlapping.

12 Additionally, Mr. Katz is currently -- his current
13 status with the company is as a contractor, and he's not in
14 our control to the same degree as other employees. He also
15 has a lot of foreign near term travel scheduled. And
16 although we're talking to him, he's not yet agreed to sit
17 for a deposition and there are a lot of issues related to
18 sitting in for a deposition. So we'd ask --

19 THE COURT: Where does he reside?

20 MS. FELL: His primary residence, I believe, is in
21 California, although someone can correct me on that. He's a
22 consultant and he does -- he does travel, you know, usually
23 four days a week for work. So he's sort of a citizen of the
24 world.

25 THE COURT: Is he a full-time consultant for one

1 of your client?

2 MS. FELL: I'm not sure if he's full-time, but he
3 is in a consulting role for our client.

4 MR. MCCARRICK: Your Honor, if I may be heard on
5 Mr. Katz?

6 THE COURT: Let Ms. Fell finish and then I'll give
7 you a chance again. Go ahead, Ms. Fell.

8 MS. FELL: Thank you, Your Honor. So, just to sum
9 it up, Mr. Tosi and Mr. Goodman, we have agreed to. Mr.
10 Katz, you know, does have relevant knowledge, we
11 acknowledge, but it's similar to Mr. Goodman's knowledge and
12 there's some practical issues with his deposition testimony.
13 And the remaining individuals had very limited roles. Their
14 knowledge is going to be completely subsumed by the
15 proffered witnesses. And we'd ask that Your Honor limit
16 those depositions.

17 I will also say that we would be happy to allow
18 the Debtors to take the two proffered depositions and then
19 after taking those depositions in their individual and
20 corporate capacities, if they want to come back to us with a
21 reasonable limited targeted suggestion for additional
22 testimony, not full-day, on particular issues, we would be
23 happy to consider that request.

24 THE COURT: All right. Mr. McCarrick, you wanted
25 -- something you wanted to say, Mr. McCarrick?

1 MR. MCCARRICK: Yes, just to on Mr. Katz, Your
2 Honor, three points. One, he is a resident of California.
3 Second, this hearing is the first time that we've heard he's
4 not an employee, that he is just a consultant. We had
5 correspondence with the Series B Holders about who was and
6 was not in their control, and who was current or former
7 employees. And we learned today for the first time that
8 they may not be able to produce him. That's incredibly it's
9 incredibly prejudicial.

10 And the third thing I will say, Your Honor, is
11 having seen Mr. Katz's documents, including Mr. Katz's
12 documents with himself, with no one else on them, the
13 statements that he is of "marginal relevance" and has
14 "similar knowledge to other people" are ones we will be
15 quoting back to Your Honor in our briefing. We can promise
16 you that.

17 THE COURT: Okay.

18 MS. FELL: I'm sorry, Your Honor.

19 THE COURT: All right, stop.

20 MS. FELL: (indiscernible) relevant --

21 THE COURT: That's enough. No, no, no, no. I've
22 heard enough.

23 MS. FELL: Okay.

24 MR. MESTER: Your Honor --

25 THE COURT: No --

1 MR. MESTER: (indiscernible)

2 THE COURT: Go ahead.

3 MR. MESTER: I'm sorry. I'd like to address a
4 couple of points in --

5 THE COURT: Go ahead, Mr. Mester.

6 MR. MESTER: So, just two points. First with Mr.
7 Azzi, he's referencing a five-page document that has
8 essentially two paragraphs about the Debtors' books and
9 records that --

10 THE COURT: It ought to be a short deposition,
11 then.

12 MR. MESTER: -- that was actually prepared largely
13 by an outside consultant whose reports have been produced.
14 There's a difference between having material knowledge and
15 having unique knowledge. If all the witnesses have the same
16 material knowledge, it's not necessary to take all the
17 depositions.

18 THE COURT: All right. The Court's ready to rule.
19 So the objections to taking of the 13 -- all 13 depositions
20 is overruled. First, with respect to proportionality, this
21 matter involves over \$600 million. And it's a matter that
22 essentially has been raised by the Preferred Holders that
23 have pressed this issue. The matter is and needs to be on a
24 very expedited schedule.

25 While in some circumstances I might say, all

1 right, take the first few depositions, come back and tell me
2 more, it's really inappropriate in these circumstances.
3 This matter has to be fully ready for hearing on the
4 schedule in which it's already set. So, first.

5 On proportionality, the scope of the discovery
6 that's been sought, the number of deponents is clearly
7 relevant. With respect to the issue of the presumptive
8 limit of 10 depositions, it's acknowledged that 11 of the
9 proposed deponents have been identified in interrogatory
10 answers. And as to the other two, Mr. McCarrick has
11 identified with respect to Mr. Reinken and Mr. Mullen
12 specific documents that relate to due diligence to
13 conversations with Celsius about the books and records,
14 clearly relevant to the subject of this upcoming hearing.

15 What I would urge you to do, Mr. McCarrick, is to
16 confer. You know, what I've often found both when I was in
17 practice and in my years on the bench is that I'm not quite
18 clear on why you need seven hours for each of the deponents.
19 I suspect you don't. I suspect very strongly that you
20 don't.

21 What I think you should try and agree on with
22 counsel is, you know, prioritize the witnesses, the ones
23 where you -- based on the documents you have and seen, that
24 you need the seven hours and those that you don't. Okay.

25 I would be very disinclined to increase the

1 presumptive seven-hour limit. There have been many cases
2 when I've imposed four-hour limits. I'm not prepared to do
3 that now. With sophisticated counsel, I think you should be
4 able to resolve this. But I certainly believe that the
5 discovery that's being sought is proportional to the
6 dispute. It's a very, very substantial dispute, very
7 important to the Celsius reorganization and the Celsius
8 case.

9 So, do you want a written order? If you want a
10 written order, I will have Mr. McCarrick prepare a written
11 order, or I'll so order the transcript. You can order the
12 transcript. But I'm ordering that all thirteen of these
13 depositions go forward, and they have to go forward quickly.
14 There will be some simultaneous depositions, but you know
15 this is the case where very, very sophisticated, large firms
16 represent parties and are able to provide multiple lawyers.
17 Multiple lawyers have been involved in the Celsius case for
18 quite some time to be able to take or defend depositions.

19 Anything else for today?

20 MR. MCCARRICK: Not from the Debtors, Your Honor.
21 And we're happy with a transcript. We'll work with the
22 other side to limit the time where that's -- where that
23 makes sense.

24 THE COURT: All right. So, I'm so ordering the
25 transcript. If the Preferred Holders want a written order,

1 I'd ask Mr. McCarrick to prepare a written order. I don't
2 think it's necessary, but if you want it, he'll be happy to
3 get it. All right, we are adjourned.

4 MS. FELL: Thank you, Your Honor.

5 MR. MCCARRICK: Thank you, Your Honor.

6 MR. MESTER: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at
8 3:31 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: June 10, 2023

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